RM-7651
Docket 96-120

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du Treil, Lundin & Rackley, Inc.
A Subsidiary of A. D. Ring, P. C.

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February 1, 1991

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Federal Communications Commission
Office of the Secretary

RM 7651
Docket 96-120

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Searcy:

This firm joins Hatfield & Dawson, Seattle, Washington and Cohen, Dippell and Everist, P.C., Washington, D.C. in petitioning the Commission to institute a rule making proceeding looking toward revision of Section 73.213(a) of the FCC Rules. Four copies, plus an original, of the petition are attached.

Please contact the undersigned should there be any question regarding this matter.

Very truly yours,

Louis R. du Treil

Louis R. du Treil

Enclosures

cc: Mr. Alfred C. Sikes
Mr. James H. Quello
Mr. Andrew C. Barrett
Ms. Sherrie P. Marshall
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RM-7651

ORIGINAL FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Amendment of 73.213(a)	)	RM-7651
Grandfathered Short-Spaced Stations	)	

Joint Petition for Rule Making

Introduction

The firms, Hatfield and Dawson, Seattle, Washington; du Treil, Lundin & Rackley, Inc., Washington, D.C., and Cohen, Dippell and Everist, P.C., Washington, D.C., represent numerous clients in connection with technical matters before the Federal Communications Commission, and hereby jointly petition the FCC to institute a rule making proceeding for the purpose of modifying 47 CFR 73.213(a). Changes in 47 CFR 73.213, made as the result of the "Second Report and Order" in MM Docket No. 86-144, released on September 25, 1987, did not appear to fully consider all of the relevant issues, and as a result, they have served to confuse and slow the processing of applications. Changes in the rules are needed in order to provide opportunity for

grandfathered[1] short-spaced stations to improve or maintain their coverage.

Proposed Change

It is proposed to modify 47 CFR 73.213 to read in part as follows:[2]

73.213 Grandfathered Short-Spaced Stations

(a) Stations authorized prior to November 16, 1964 that did not meet the separation distances required by 73.207 and have remained short-spaced since that time may be modified or relocated and may apply for facilities up to the maximum permitted in 73.211, except that stations short-spaced to a co-channel or first adjacent channel station(s) may not extend the pertinent interfering contour[3] toward the 1 mV/m (60 dBu) field strength contour of the short-spaced station(s). Mutual increase in the facilities of stations short-spaced with co-channel or first

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[1]Throughout this petition, all grandfathered stations referred to are those in existence prior to November 16, 1964.

[2]This petition relates to commercial FM broadcast stations; however, the Commission may wish to similarly process non-commercial educational (NCE) station applications, which involve existing prohibited contour overlap. The pertinent NCE rule is contained in 47 CFR 73.509(d).

[3]Co-channel interfering contour is 40 dBu [F(50,10)] and first adjacent interfering contour is 54 dBu [F(50,10)]. The 1 mV/m contour, for the purpose of this rule, has been and should remain as the protected contour, even though recent rule changes have modified the protected contour value for Class B and B1 stations.

adjacent channel station(s), up to the limits set forth in 73.211, may be permitted pursuant to an agreement between affected stations and a showing of public interest. See 73.4235.[4]

Discussion

One result of MM Docket No. 86-144 was to modify rules regarding grandfathered short-spaced FM stations. Two changes in the rules are hereby requested:

1. Permit stations which are short-spaced to co-channel or first adjacent channel stations to apply for maximum parameters for the class of station involved, provided the pertinent predicted interfering contour produced by the proposed modified facility does not extend any further in the direction of the short-spaced station's predicted 1 mV/m contour, or if contour overlap already occurs, such overlap area is not increased.

2. Permit stations which are short-spaced to second or third adjacent channel station(s) to change location

[4]The Commission may wish to incorporate the referenced policy statement into new rules. In any event, the statement should be revised so as to permit changes in transmitter location as part of the mutual agreement and to conform the statement to current rules.

without regard to further short-spacing and to increase station parameters to the maximum permitted by 73.211.[5]

Section 73.213 of the current FCC Rules proscribes any change in a short-spaced station which would extend the predicted distance of the 1 mV/m contour toward the 1 mV/m contour of the short-spaced station. Two difficulties have arisen from this change which the instant petition seeks to correct. First, in the case of co-channel or first-adjacent-channel short-spaced stations, the rules are unnecessarily restricting for stations wishing to optimize parameters. The object of the rule should be to ensure that predicted interference to such short-spaced stations is not increased as a result of changes in location or operating parameters. Thus, prohibiting an increase in the distance to the predicted interfering contour of one station toward the 1 mV/m service contour of the other station should be the outcome. The following examples illustrate the point.

Example 1. A grandfathered Class C station is short-spaced with a co-channel Class C station. The required distance between

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[5]It is not intended that such stations would be collocated with the short-spaced station. Presumably, other separation restraints or city coverage obligation would limit the distance of a site change.

them is 290 kilometers while the actual distance is 225 kilometers. The station desiring to move employs facilities of 50 kilowatts effective radiated power and 610 meters height above average terrain[6] which produces a predicted 1 mV/m (60 dBu) contour at 85.3 kilometers in the direction of the short-spaced station and a 0.1 mV/m (40 dBu) interfering contour at 182.4 kilometers. If the station desires to move 5 kilometers closer to the short-spaced station, under existing Section 73.213(a) of the FCC Rules, the distance to the 1 mV/m (60 dBu) contour could not exceed 80.3 kilometers in the direction of the short-spaced station. Assuming the same height above average terrain at the new location, 610 meters, the maximum permitted effective radiated power is 31 kilowatts. However, if the 0.1 mV/m (40 dBu) interfering contour is used as the limiting factor as now being proposed, the permitted effective radiated power would be 39.5 kilowatts. It appears to be in the public interest to permit the station to operate with 39.5 kilowatts rather than 31 kilowatts, since the existing level of interference to the short-spaced station is not exceeded.

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[6]Antenna height above average terrain is used in the examples for simplification. Average terrain on radials in the pertinent directions would actually be employed.

Example 2. Two first adjacent channel short-spaced Class C stations operate 177 kilometers apart. The station wishing to move currently operates with 50 kilowatts effective radiated power and 610 meters height above average terrain which results in a predicted 1 mV/m (60 dBu) contour at 85.3 kilometers and a 0.5 mV/m (54 dBu) interfering contour at 125.8 kilometers. Assuming the station moves 10 kilometers closer and maintains its antenna height above average terrain of 610 meters, the power would be limited to 19.5 kilowatts, if the reference distance to the 1.0 mV/m contour is maintained in accordance with the existing rules, or 25.5 kilowatts if the reference distance to the interfering contour is employed. It appears to be in the public interest to permit the station to provide the additional coverage possible with 25.5 kilowatts rather than 19.5 kilowatts since no additional interference to the short-spaced station would result.

In the second instance of difficulty, experience has shown that the rules adopted in MM Docket No. 86-144 resulted in numerous applications filed with the Commission where a short-spaced station on the second-or third-adjacent channel is located within the 1 mV/m contour of the short-spaced station. The Commission's staff has recognized the resulting lacuna in the

rules, as elucidated in a letter from Larry Eads, Chief, Audio Services Division, Mass Media Bureau, to Ronald H. Cowan and King Broadcasting Company, December, 19, 1989, where it was stated,

> "A review of the Second Report and Order in Docket 86-144 reveals that the rule adopted envisioned the transmitter site of the applicant grandfathered station to be outside the 1 mV/m contour of the protected station. In that case, an applicant station simply cannot extend its 1 mV/m contour towards the 1 mV/m contour of the protected station. However, the rule making proceeding clearly did not consider the situation presented in this case, where the 1 mV/m contour of the applicant station is wholly encompassed by a protected grandfathered station's 1 mV/m contour."

In order to remedy this situation, the Commission is requested to reinstate the original rule of 73.213 for all second-and third-adjacent channel grandfathered short-spaced stations, thereby permitting such stations to achieve maximum parameters without regard to further short-spacing.

Prior to the most recent revision of the rules, the Commission had, at least since 1964, recognized that no significant problems would result from allowing stations short-spaced on second-and third-adjacent channels to improve their facilities. Revision of FM Rules, 3 RR 2d 1571. There, the Commission stated (1582-83):

> "With very few exceptions, all the parties recommend that short spacings on second and third adjacent

> channels be disregarded in any proposal which is adopted. It was pointed out that this interference is usually very small, occurs around the transmitter site of the station causing the interference, and that in any event the small amounts of interference caused are more than offset usually by the advantages of power increases for all stations.... [T]he situations we are dealing with here are existing ones in which some interference already exists. And as has been shown further, the increase in interference is only in a small ring around the station, in the order of a few miles to less than 1/2 mile depending on the relative facilities of the stations involved. Another great difficulty with taking into account such assignments is this: in the event a station is encompassed by the 1 mV/m contour of another station either under its existing or expanded facilities, the station cannot improve its facilities in any direction, and is thus frozen at its present facilities. In the case of co-channel and first adjacent channel separations this situation cannot occur and a station can usually obtain an increase in some directions. Because of the restrictions which would be imposed, the usually small amount of additional interference resulting, and the overall benefits to be obtained on balance, we will permit stations to disregard short-spaced stations on second and third adjacent channels in making requests for increased facilities." [emphasis supplied]

Although it is of course correct, as the Commission pointed out in its revision of Section 73.213 in MM Docket No. 86-144, that the FM band has become more crowded (63 RR2d at 1271), the Commission cited no evidence that the prior rule in fact resulted in increased interference. The Commission correctly recognized in 1964 that permitting parameter increases by second-or third-adjacent channel short-spaced stations would not result in significant problems. Neither are petitioners aware of any such

problems resulting from the former rule. The rules as revised in MM Docket No. 86-144 unnecessarily hamper licensee flexibility in modification of facilities to better serve the public.

Indeed, permitting this type of facility increase could reduce interference to a second-or third-adjacent station. This is so because the improved signal may be able to serve areas and populations otherwise subject to interference. Another advantage of the proposed rule change is that it is extraordinarily convenient to administer. Thus, under the guise of protecting against the hypothetical "risk" of interference (63 RR2d at 1271), the Commission actually perpetuated a scheme whereby "actual" interference can continue to exist.

In these circumstances, the wiser course would seem to be the reinstatement of the prior rule.

Conclusions

The proposed rule modifications provide for higher power for existing short-spaced stations wishing to change location without creating any additional interference to a companion short-spaced station(s). In addition, the change permits operation up to the

maximum permitted facilities for second-and third-adjacent channel short-spaced stations without regard to existing or proposed short-spacing. The latter change simply reinstates a rule that was in effect for some 22 years, and which in our opinion did not result in substantial interference consequences. The proposed changes will also promote administrative efficiency, as they eliminate the inconsistency of the present rule.

Respectfully submitted,

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February 1, 1991